

Giddings & Lewis, Inc. and District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 30-CA-6062

August 19, 1981

ORDER DENYING MOTION

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On November 21, 1980, the Regional Director for Region 30 of the National Labor Relations Board issued a complaint and notice of hearing in the above-entitled proceeding, alleging that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Subsequently, Respondent filed an answer admitting in part, and denying in part, the allegations of the complaint.

On March 31, 1981, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. Thereafter, on April 15, 1981, the Board issued an order transferring the proceeding to it and a Notice To Show Cause why the General Counsel's motion should not be granted. Thereafter, Respondent filed a memorandum in opposition to the Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

The General Counsel asserts in its motion that Respondent violated Section 8(a)(3) and (1) of the Act by imposing restrictions upon the recall rights of former economic strikers who unconditionally offered to return to work. The General Counsel asserts that on or about November 19, 1976, the Union, representing John E. Ferguson and other employees of Respondent who had been engaged in an economic strike, made an unconditional offer for them to return to work. Respondent thereafter established a preferential hiring list and procedure for recalling strikers who had been replaced during the strike. By certified letter of February 9, 1979, Respondent notified Ferguson that his name would be removed from the preferential hiring list unless he informed Respondent by March 12, 1979, of his desire to remain on the list. By letter of March 5, 1979, Ferguson informed Respondent that he wished to remain on the list. Respondent acknowledged receipt of Ferguson's letter on March 7,

1979. In this same communication, Respondent instructed Ferguson that he must again notify Respondent of his continued interest in remaining on the list during August 1979, or face removal from the list as of September. Ferguson complied with the August notification requirement. Subsequently, Respondent informed Ferguson that his name would be deleted from the list on March 1, 1980, unless he again notified Respondent during February 1980 that he wished to remain on the list. Ferguson again submitted a timely renewal of his continuing interest in reinstatement. Thereupon, he was told that he must repeat this procedure during August 1980. Ferguson failed to provide this notice and, on September 10, 1980, Respondent notified him that his name had been removed from the preferential hiring list. The Union filed the charge in this case on September 24 and on November 21, 1980, the Regional Director for Region 30 issued a complaint alleging that Respondent imposed these notification requirements on Ferguson because of his union and concerted activities. The General Counsel contends that under the principles enunciated in *The Laidlaw Corporation*, 171 NLRB 1366 (1968), and reaffirmed in *Vitronic Division of Penn Corporation*, 239 NLRB 45 (1978), Respondent has unlawfully infringed upon Ferguson's right to be offered the opportunity to fill job vacancies following his post-strike unconditional offer to return to work.

In its answer to the complaint and in its memorandum in opposition to the General Counsel's motion, Respondent admitted that it established the above-described system for keeping its preferential hiring list current and that it removed Ferguson from the list after he failed to express interest in reinstatement during August 1980. However, Respondent denies that it thereby violated the Act, and asserts that this procedure constitutes a reasonable administrative approach to maintaining an accurate and useful recall list. Respondent argues that the language of *Brooks Research & Manufacturing, Inc.*, 202 NLRB 634 (1973), and *American Machinery Corporation v. N.L.R.B.*, 424 F.2d 1321 (5th Cir. 1970), specifically permit an employer to impose reasonable notification requirements upon unreinstated former strikers desiring reinstatement. Respondent contends that the General Counsel's motion should be denied and that a hearing should be held to permit Respondent to present evidence that its procedure was justified by legitimate business interests and was in no way designed to discriminate unlawfully against employees. The Board, having duly considered the matter, is of the opinion that there are substantial and material issues of fact and law which may best be resolved

at a hearing before an administrative law judge.

ORDER

It is hereby ordered that the General Counsel's Motion for Summary Judgment be, and it hereby is, denied.

It is further ordered that the proceeding be, and it hereby is, remanded to the Regional Director for Region 30 for the purpose of arranging such hearing and that such Regional Director be, and he hereby is, authorized to issue notice thereof.